

REMARKS/ARGUMENTS

1. Docket Number

Applicants respectfully request that the Attorney Docket number be amended to “3997P006”, as originally specified in the application.

2. Summary of the Office Action

Claims 1, 2 and 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 and 4 of U.S. Patent No. 6,674,717.

Claims 1, 3 and 5 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent No. 6,600,721 (hereinafter Edholm).

Claims 2 and 4 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Edholm in view of U.S. Publication No. 2002/0118649 (hereinafter Farley).

3. Response to Double Patenting Rejections

Claim 1 has been amended to include the features of claims 3 and 4. Therefore, the rejection under the judicially created doctrine of obviousness-type double patenting has been obviated. The Applicants respectfully request reconsideration of the application.

4. Response to 35 U.S.C. § 112 Rejections

Claims 1-4 are rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter. Claim 1 has been amended such that the rejection is obviated. The Examiner is thanked for a thorough review of the application.

5. **Response to 35 U.S.C. § 102 Rejections**

Reconsideration of this application, as amended, is respectfully requested. The claims have been amended as recited above and all of the amendments are supported by the specification as originally filed, for example paragraph [0034]. Accordingly, no new matter has been introduced.

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants contend that each and every element of the present claims is simply not found in Edholm. Edholm teaches a system for pacing data between a network and an end node using a threshold bandwidth which is based on the receiving capabilities of a client device (Abstract). However, Edholm fails to teach each and every element of the present claims. In particular, the present amended claims relate to a “method, comprising operating a control node of a communication network at a packet bandwidth corresponding to a best observed resonance point of network performance metric **from a plurality of resonance points, wherein the resonance points are determined by scanning across a range of control bandwidths until one or more of the network performance metrics is/are optimized.**” (Claim 1; emphasis added). Edholm only teaches that “the control application monitors the total data transferred in a burst window to control a rate of data flow. In protocols such as ATM which utilize standard packet sizes, counting the number of packets in a burst window may be sufficient to determine a data flow. In alternate embodiments the control application may also measure data packet size to maintain the total data transfer rate remains within the allotted bandwidth.” (Edholm, Col.4, lines 63 – Col.5, line 3). It will be noted that the method of Edholm only teaches using network metrics such as number of data packets or data packet size to determine the data flow rate. Nowhere is there any mention of the “packet bandwidth corresponding to a best observed resonance point of network performance metric from a plurality of resonance points” (Claim 1). Moreover, the Office Action asserts on page 9 that Edholm fails to disclose that the “resonance points are determined by scanning across a range of control bandwidths until one or more of the performance metrics is/or optimized” (Claim 1). Therefore, the present claim is patentable over Edholm.

6. Response to 35 U.S.C. § 103 Rejections

Claims 2 and 4 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Edholm in view of Farley.

As established above, Edholm fails to anticipate the present claim as Edholm does not teach setting the bandwidth to a resonance point from a plurality of resonance points determined by scanning across a range of control bandwidth until one or more of the network performance is optimized. Even the additional teachings of Farley fail to rectify the deficiencies of Edholm. Farley teaches a system and method which modifies a link control parameter of a connection according to a corresponding flow model (Farley, [0005]). However, nowhere in Farley is there any mention of determining a resonance point by “scanning across a range of control bandwidths until one or more of the network performance metrics is/are optimized” (Claim 1). Indeed, Farley is not concerned with scanning across a range of control bandwidth to locate an optimized network performance metric. On the contrary, Farley uses various link control parameters, such as modulation type, ARQ disable flag, coding rate, delay, minimum suggested bandwidth, average suggested bandwidth, maximum suggested bandwidth and others, to provide an optimal data transmission (Farley, [0007]). Such optimization technique is not equivalent to the present claim of “scanning across a range of control bandwidths until one or more of the network performance metrics is/are optimized” (Claim 1). Obviously, Farley shares the same deficiencies as Edholm. Therefore, the present claims are patentable over Edholm in view of Farley.

In addition, though the Office Action asserts that Farley, in particular paragraph [0007], teaches the present claim, this assertion is incorrect. As established above, Farley merely teaches using various link control parameters to optimize a data transmission. Farley does not require any scanning to be performed over a range of control bandwidth in order to obtain one or more optimized network performance metrics. Consequently, Edholm in view of Farley fails to anticipate the present claims.

7. **Conclusion**

Having tendered the above remarks and amended the claims as indicated herein, the Applicants respectfully submit that all rejections have been addressed and that the claims are now in a condition for allowance, which is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact Jaina Chua at (408) 947-8200.

Respectfully submitted,

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